

1 JOEL K. BELWAY [60556]
2 THE LAW OFFICE OF JOEL K. BELWAY
3 Professional Corporation
4 235 Montgomery St., Suite 668
5 San Francisco, CA 94104
6 Telephone: (415) 788-1702
7 Facsimile: (415) 788-1517

5 Attorney for Plaintiff
TERRIE OLSON

In re

Case No. 08-10419

HARRY PALMER ALTICK,

Chapter 11

Debtor.

TERRIE OLSON

A. P. NO.

Plaintiff,

**COMPLAINT TO DETERMINE
NONDISCHARGEABILITY**

VS.

[Bankruptcy Code § 523(a)(15)]

HARRY PALMER ALTICK,

Defendant.

23 COMES NOW plaintiff, TERRIE OLSON ("Olson"), and alleges as
24 follows:

JURISDICTION

26 1. Defendant and Debtor, HARRY PALMER ALTICK ("Debtor"),
27 is the debtor in a bankruptcy case commenced by the filing of an
28 involuntary petition (the "Petition") under Chapter 11 of the

1 United States Bankruptcy Code on March 11, 2008 in the above-
2 entitled Court, No. 08-10419 (the "Case").

3 2. Venue for this proceeding lies in this Court under 28
4 U.S.C. §1409.

5 3. This Court has jurisdiction of this proceeding under
6 28 U.S.C. §157 and 28 U.S.C. §1334.

7 4. This proceeding is a core matter under 28 U.S.C.
8 §157(b)(2)(I).

GENERAL ALLEGATIONS

10 5. Olson and Debtor are parties to a pre-petition marital
11 dissolution proceeding in the Marin County Superior Court, No. FL
12 061246, *In re Marriage of Altick* (the "Marin FL Proceeding"), in
13 which a judgment dissolving their marriage was filed on May 31,
14 2006 (the "Judgment"), which incorporated a Marital Settlement
15 Agreement between Debtor and Olson (the "MSA"). A copy of the
16 Judgment with the MSA is attached as Exhibit 1 hereto.

17 6. From the Judgment sprang three 2008 orders (the "FL
18 Orders") by the Marin County Superior Court (the "Family Court")
19 prior to the filing of Debtor's Chapter 11 case. Copies of the FL
20 Orders are attached collectively as Exhibit 2 hereto.

21 7. The combination of the FL Orders, the Judgment and
22 the MSA led to an adversary proceeding filed by Debtor, as
23 plaintiff, against Olson, as defendant, in this Court, No. AP 08-
24 01050 (the "Adversary Proceeding"). A copy of Debtor's complaint
25 in the Adversary Proceeding (the "AP Complaint") is attached
26 hereto as Exhibit 3.

27 8. A settlement was reached between Debtor and Olson in
28 the Adversary Proceeding; the settlement was the subject of

1 notice to creditors and Debtor's Motion for Orders Approving
2 Compromise, etc. filed November 10, 2008 (the "AP Settlement
3 Motion"), which was approved by this Court on November 21, 2008
4 (the "AP Settlement"); a copy of the AP Settlement Motion is
5 attached as Exhibit 4 hereto.

6 9. The basic terms of the AP Settlement were that Debtor
7 was to pay \$10,000 each to the attorneys for Debtor and Olson in
8 the Marin FL Proceeding and pay Olson \$15,000 in settlement of
9 specific provisions in the Judgment regarding Debtor's payment
10 for a car used by Olson. In consideration for those payments,
11 Olson released a claim that certain real estate commissions were
12 held in a judicial trust created by the Family Court and agreed
13 that the balance of funds in dispute and any other commissions
14 earned during bankruptcy by Debtor after the petition were
15 property of the bankruptcy estate.

16 10. The required payments were made by Debtor, following
17 which Olson's family law attorney filed, as requested by counsel
18 for Debtor herein, a partial Acknowledgment of Satisfaction of
19 Judgment (the "Partial Satisfaction"), a copy of which is
20 attached as Exhibit 5 hereto.

21 11. The Partial Satisfaction fully and correctly
22 acknowledged that Debtor's obligations under the Judgment and FL
23 Orders were satisfied only to the following extent: "1. The sum
24 of \$10,000.00 to Stefan A. Spielman pursuant to Paragraph 4 of
25 the Findings and Order after Hearing dated February 21, 2008. 2.
26 The sum of \$15,000.00 to Terrie Olson to satisfy Harry Altick's
27 obligation under Paragraph I.c. of the Marital Settlement
28 Agreement attached to the Judgment filed May 31, 2006."

1 12. On October 24, 2008 this Court dismissed the AP
2 Complaint with prejudice. A copy of the dismissal order is
3 attached as Exhibit 6 hereto.

4 13. Olson objected to Debtor's Chapter 11 Plan ("Plan"), on
5 the grounds that it purported to satisfy all claims by Olson
6 under the Judgment, MSA and FL Orders, notwithstanding the
7 limited scope of the AP Settlement and the limited scope of the
8 Partial Satisfaction. The Court confirmed the Plan and, with the
9 consent of Olson and Debtor, modified the enforcement of
10 indemnity rights of the parties under the Judgment and MSA, by
11 stating in the Confirmation Order entered April 6, 2009 (the
12 "Confirmation Order") as follows:

13 "IT IS FURTHER ORDERED that nothing in the plan shall be
14 deemed to discharge Terrie Olson's right to indemnity created by
15 state court family law judgment. Provided, however, that such a
right to indemnification may be enforced only if:

15 1. A creditor subject to the debtor's indemnification
16 obligations has made demand on her or otherwise taken action
against her or;

17 2. She has been informed by an accountant or lawyer that
18 she is liable on a tax for which she has a right to
indemnification; and

19 3. This court, after notice and a hearing, has granted her
20 leave to enforce her indemnification rights. The court will
21 grant such leave unless the debtor demonstrates that he is taking
effective steps to avoid actual harm to Olson."

22 14. Olson timely objected to the Confirmation Order on the
23 grounds that, although it addressed Olson's indemnity claims, it
24 was silent as to other claims by Olson under the Judgment and
25 MSA. The Court on May 15, 2009 overruled Olson's objection and
26 ruled that the Confirmation Order was in effect but without
27 prejudice to Olson's right to bring an adversary proceeding for

1 nondischargeability. Pursuant to the Court's ruling on May 15,
2 2009, Olson brings this adversary proceeding.

3

CLAIM FOR RELIEF
(Nondischargeability Under
Bankruptcy Code § 523(a) (15))

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5 15. Olson realleges and incorporates herein by reference
6 each and every allegation set forth in paragraphs 1 through 14
7 hereinabove as though set forth at length.

8

9 16. Except as expressly satisfied by the AP Settlement and
10 the Satisfaction of Judgment, and except as modified as to
11 indemnity rights by this Court's Confirmation Order, all claims
12 by Olson against Debtor arising from the Judgment, MSA or FL
13 Orders in the Marin FL Proceeding are not discharged under
14 Bankruptcy Code §523(a) (15). Such claims include indemnity
15 rights, attorney's fees and property usage rights.

16 WHEREFORE, Olson prays for judgment as follows:

- 17 a. That the Court determine that except as expressly
18 satisfied by the AP Settlement and the Partial
19 Satisfaction, and except as modified as to Olson's
20 indemnity rights by this Court's Confirmation Order,
21 all claims by Olson against Debtor arising from the
22 Judgment, MSA or FL Orders in the Marin FL Proceeding
23 are not discharged under Bankruptcy Code §523(a) (15);
24 b. Costs of suit incurred; and
25 c. Such other and further relief as the Court may deem
26 meet in the premises.

1 Dated: July 13, 2009

THE LAW OFFICE OF JOEL K. BELWAY
Professional Corporation

3 /s/Joel K. Belway
4 JOEL K. BELWAY

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